I confess to not knowing where the true answer lies but in this case to apply the beneficial construction would be to bring the appellant within a penal enactment and accordingly I would apply the rule of strict construction and give the benefit of the doubt to the appellant. As *Maxwell* in *The Interpretation of Statutes*, 10th Ed., at page 285 states: "The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself."

The appeal is therefore allowed and the conviction quashed and the Mandatory Order rescinded.

Appeal allowed.

Solicitors: *Eber & Tan.*

MEELAMCHAN & ANOR. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) May 17, 1962]

[K.L. — F.M. Criminal Appeal No. 8 of 1962]

Criminal Law and Procedure — Identification parade — Statement made to police at — Criminal Procedure Code (Cap. 6), s.113.

Evidence — Evidence of identification parade — Conduct of parade by police — Evidence Ordinance, 1950, s.157.

In this case the appellants were charged with attempted murder and both were convicted and sentenced to ten years' imprisonment each. Both appellants were the subject of identification parades conducted by the police in the course of their investigations. The trial judge rejected complainant's identification of the first appellant but accepted his identification of the second appellant because of certain evidence relating to the identification parades conducted by the police. In the first identification parade, the complainant "picked out" the appellant Raju but he failed to "pick out" Maniam the first appellant and went on and picked out two innocent persons. In the second parade, neither of the two appellants was present but the complainant again "picked out" an innocent person. The trial judge in coming to his conclusions attached considerable weight to the evidence of what happened at the identification parades. On appeal to the Court of Appeal,

Held: (1) evidence of what happened at the identification parades conducted by the police was not admissible in evidence; *Ramkishan* v. *Bombay State* (2), followed;

(2) what is inadmissible is not evidence of identification parades as such but only evidence of what happens at such parades in the presence of the police. The prohibition arises from the provisions of section 113 of the Criminal Procedure Code. Evidence relating to the conduct and statements of witnesses at an identification parade which consists of an accused person and a number of innocent persons of similar racial type can, however, be of very great value and if conducted by prison officials or indeed any persons of responsibility other than police officers evidence of what happens at such a parade is admissible under section 157 of the Evidence Ordinance, 1950 as corroborative of the evidence of any witness called at the trial;

(3) the appeal must be allowed and conviction set aside.

[Editorial Note: There were in our opinion several other unsatisfactory features in this trial which were not raised on appeal and consequently were not dealt with by the Court of Appeal. In the first place the charge was bad on the face of it on two grounds. Firstly, if the common intention was merely to cause hurt as alleged in the charge, the charge of attempted murder could not stand against Maniam the first appellant who did not stab Arumugam. Secondly, as section 34 of the Penal Code was invoked the charge should have named the person or persons who did the actual stabbing of Arumugam. Furthermore evidence was led at the trial that the first appellant Maniam fatally stabbed one Suppiah. This evidence in our opinion was inadmissible as it was irrelevant to the charge and even if it was admissible it should have been excluded on the ground that it was highly prejudicial to the first appellant. The evidence in this case as we understand it was that the two appellants Maniam and Raju attacked two others, namely Arumugam and Suppiah causing serious injuries to both of them. Suppiah died on the spot and Arumugam would have died if not for prompt and expert medical attention. In our opinion the two appellants should have been jointly charged and tried on two counts, firstly, murder of Suppiah and secondly, attempted murder of Arumugam. In our opinion, the whole incident was a single transaction in which the circumstances of the stabbing made out a common intention on the part of both appellants to kill Arumugam and Suppiah. They succeeded in killing Suppiah and failed to kill Arumugam only because he was saved by the surgical skill of the doctor who operated on him. The judgment of the Court of Appeal in this case is of paramount importance as it deals fully with a point of law on which there had been no authoritative pronouncement in the past. The question of police identification parades has vexed the minds of lawyers both in Malaya and in India because of the special identical statutory provisions in both countries which prohibit the tendering in evidence at a trial of any statement made in the course of police investigations. The judgment of the Court of Appeal has made new law and has sounded the death knell of police identification parades which in future shall be valueless so far as admissible evidence is concerned].

Cases referred to:—

(1) *Lee Lian & Ors.* v. *Public Prosecutor* [1956] M.L.J. 191.

(2) *Ramkishnan* v. *Bombay State* A.I.R. 1955 S.C. 104; [1955] 1 S.C.R. 903.

(3) *Nagalingam & Ors.* v. *Public Prosecutor* [1957] M.L.J. 196.

COURT OF APPEAL (CRIMINAL).

R. Ponnudurai for the appellants.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: These appellants were tried together in the High Court at Kuala Lumpur on the following charge:—

"That you, jointly with others still at large, on 10th September, 1961, at about 5.30 p.m. at Kampong Chetty, off Circular Road, Kuala Lumpur, in the State of Selangor, with the common intention to cause hurt, did an act, to wit, stabbed with a knife one Arumugam s/o Palani, in the furtherance of such common intention, with such knowledge and under such circumstances that if by that act you had caused the death of Arumugam s/o Palani you would have been guilty of murder and that you have caused hurt to the said Arumugam s/o Palani, and that you thereby committed an offence punishable under section 307 and section 34 of the Penal Code."

They were both convicted and each of them was sentenced to 10 years' imprisonment. Against these convictions and sentences they have now appealed.

The case arose out of an incident which took place in what is known as Kampong Siam, a slum area in Kuala Lumpur, in the course of which the complainant Arumugam was severely but not fatally stabbed and one Suppiah, his nephew, was stabbed to death.

The stabbing took place on a Sunday afternoon in broad daylight and though it must have been seen by a number of persons the only witness who gave evidence as to what actually happened was Arumugam himself. This was unfortunate but it is a common handicap under which the administration of justice labours here that eye-witnesses are reluctant to give evidence of any sort either for the prosecution or the defence. As far as the defence is concerned the difficulty is generally offset by a plethora of witnesses who are prepared to support any defence in the nature of an alibi.

Arumugam's evidence as to what took place was accepted by the trial judge, and indeed there was no reason why it should not have been accepted. Apart from being uncontradicted it was supported by the existence of his nephew's dead body and the medical evidence as to his own injuries.

He said that he had a niece named Letchumi, a married woman who had left her husband to live with a man Lourdesamy in Kampong Siam. He and Suppiah went to look for her to persuade her to return home. After some difficulty they found the house of Lourdesamy but when they knocked at the door a man who may have been Lourdesamy (this is not clear on the evidence) left the house and ran away. Suppiah ran after him but apparently failed to catch him and returned to the house where he and his uncle remonstrated with Letchumi. Their remonstrances were of no avail and they started to return to their motor car which they had left some distance away. They were walking along a narrow lane between some houses in single file with Suppiah in front when a man ran past Arumugam and stabbed Suppiah who fell down dead. Another man followed and stabbed Arumugam twice, in the left side of the chest and in the left loin below the ribs. The first of these wounds was later found to have penetrated to the lung; the second did considerable damage to the intestines and, in the opinion of the surgeon who performed an operation on the sufferer, would probably, if untreated, have caused death.

It was the case for the prosecution that it was the first appellant, who is commonly known as Maniam, who stabbed and killed Suppiah and that it was the second appellant, who is commonly known as Raju, who stabbed Arumugam and that the circumstances of the stabbing made out a common intention on the part of both appellants to kill Arumugam.

The evidence on which the prosecution relied to connect the appellants with the crime was that of Arumugam himself and of a man Md. Haniffa.

Arumugam said that he saw both the assailants and he identified Maniam as the man who stabbed Suppiah and Raju as the man who stabbed himself.

Haniffa said that on the day after the stabbing he met the two appellants somewhere near the junction of Campbell Road and Batu Road. "They" (it is not clear which actually spoke) asked him if he had heard anything the previous night and then asked him for $20. He asked what the money was for and Maniam said that they had stabbed two people in Kampong Semarang (which is some small distance from Kampong Siam) the previous night and wanted the money to go away to Ipoh. The witness had no money but he and Raju went to look for money at the house of one Das. They were unsuccessful and returned to the house of Maniam. Then all three, that is the witness, Maniam and Raju, went to the house of two Chinese, Ah Chai and Ah Soon. While Ah Soon went to make coffee Maniam asked Ah Chai for money to go to Ipoh, which Ah Chai promised to give them later. Raju then said that the man he had stabbed did not die and Maniam said that the man he stabbed did die. They played snakes and ladders for a time and then the witness and the two appellants went to an amusement park to look for money. Later both the appellants and Maniam's mother left by bus for Rawang. None of the persons mentioned by this witness were called as witnesses either by the prosecution or the defence except Maniam's mother who was called by the defence.

The only other evidence to connect the appellants with the killing was that the following day a Police Officer went to Maniam's house, which is in Kampong Semarang, and found a brown paper bundle, not concealed in any way, which contained a hatchet, two triangular files, a bayonet and scabbard and a dagger and sheath. All these were examined for blood stains and on the dagger blood stains were found on a piece of fine tissue paper adhering to the blade.

Both appellants gave evidence on their own behalf and put forward defences of alibi which were supported by witnesses.

The judge accepted the evidence of Haniffa for what it was worth as true. As regards Arumugam he rejected his identification of Maniam but accepted his identification of Raju. And it is quite clear that he was led to his conclusions in this connection by certain evidence relating to identification parades conducted by the Police.

That evidence regarding identification parades was as follows.

On 9th October Superintendent Selvanayagam held two identification parades at the hospital where "Arumugam was asked to identify". In the first parade both the appellants were present. Here the witness "picked out" the appellant Raju, but he did not "pick out" Maniam.

He went on and "identified" two casual passers-by whom the police had invited to come in and make up the parade. In the second identification parade neither of the accused was present but Arumugam again "picked out" an innocent passer-by who had been included.

It is quite clear that the trial judge attached considerable weight to the evidence of what happened at these identification parades. Haniffa's evidence, if it was believed, lent just as much (or as little) support to the case against Raju as it did against Maniam yet as regards Maniam the judge said that because of the identification parade evidence his identification by Arumugam should be totally disregarded, while as regards Raju he was not prepared to disregard Arumugam's identification. This at the lowest suggests that if it had not been for the identification parade evidence he would not have accepted Arumugam's evidence implicating Raju. And it is hardly necessary to observe that Haniffa's evidence could only be relevant at all if there was some evidence other than his own connecting at least one of the appellants with the stabbing of Arumugam or Suppiah.

Now, if the evidence of what happened at the identification parades was admissible the fact that the judge was influenced by it would not have been open to criticism here. In our view, however, it was not admissible.

These questions of the admissibility of evidence as to identification parades conducted by the police and as to whether such evidence is prohibited by section 162 of the Indian Criminal Procedure Code, which corresponds to section 113 of our Code, was for many years a controversial one in India in the sense that different views regarding it were held by different courts. In this country I myself dealt with the question in the High Court in the case of *Lee Lian & ors.* v. *Public Prosecutor* [1]. That was in 1956 and the decision of the Supreme Court of India in the case of *Ramkishan* v. *Bombay State* [2] was not available here at that time. In that case (*Lee Lian*) I said:—

> "To my mind, it is not an unfair summary of the position in India to say that although there is controversy as to the admissibility of the fact of identification at a police identification parade there is considerable unanimity to the effect that statements made in the course of such a parade are inadmissible by reason of section 162 of the Indian Criminal Procedure Code and that in this connection statements must be construed as including actions such as pointing out a person in response to questions.
>
> In the present case I do not think it is necessary for me to express any opinion as to the admissibility of the fact of identification for the evidence in question here is clearly evidence of statements and on this I would not merely follow but would express my agreement with the Indian decisions which have been quoted to the effect that such statements are inadmissible."

The following year the question again came before this Court in the case of *Nagalingam & ors.* v. *Public Prosecutor* [3]. There we followed and adopted the statement of the law in the case of *Lee Lian* which has just been quoted but refused to take that statement any further because to do so was unnecessary on the facts of the case then before us.

In the meantime, unknown to us, the controversy in the Indian Courts as to the admissibility of the bare fact of identification at police identification parades had already been resolved by the decision of the Supreme Court in India in the case of *Ramkishan* v. *Bombay State, supra.* A decision of the Supreme Court of India is, of course, not in any way binding on this Court. When, however, it relates to the interpretation of a statutory provision which is the same in India and in this country such a judgment is entitled to the very highest degree of respect. In the case in question the Supreme Court reviewed the previous Indian decisions, particularly those of the Allahabad, Calcutta and Nagpur Courts. They observed that keeping in view the background in which identification parades are held at a police station:—

> ". . . . . it is clear that the process of identification by the identifying witnesses involves the statement by the identifying witnesses that the particular properties identified were the subject-matter of the offence or the persons identified were concerned in the offence. This statement may be express or implied .....
>
> .....
>
> All these statements express or implied including the signs and gestures would amount to a communication of the fact of identification by the identifier to another person."

They went on to observe that:—

> "The distinction therefore which has been made by the Calcutta and the Allahabad High Courts between the mental act of identification and the communication thereof by the identifier to another person is quite logical and such communications are tantamount to statements made by the identifiers to a police officer in the course of investigation and come within the ban of section 162. The physical fact of identification has thus no separate existence apart from the statement involved in the very process of identification and in so far as a police officer seeks to prove the fact of such identification such evidence of his would attract the operation of section 162 and would be inadmissible in evidence."

Having regard not only to the source from which these passages come but also to the clarity of the course of reasoning which they set out we do not think it is necessary for us to say any more than that with respect we accept them as correctly stating the law.

Returning to the case before us, we then find ourselves in the difficulty that if all evidence relating to identification parades is excluded from consideration it is impossible to say with any certainty what view the judge would have taken of the evidence of Arumugam, whether he would have accepted his identification both of Maniam and of Raju or whether he would have rejected his evidence as regards both of them. And as has been said if he rejected his evidence as regards both of them there was nothing except suspicion left to connect Haniffa's evidence with the crime.

In the circumstances we are compelled to allow the appeal and set the convictions aside.

Before departing from the case we think it desirable to emphasize that what we have held to be inadmissible is not evidence of identification parades as such but only evidence of what happens at such parades in the presence of the police. The prohibition arises from the provisions of section 113 of the Criminal Procedure Code. Evidence relating to the conduct and statements of witnesses at an identification parade which consists of an accused person and a number of innocent persons of similar racial type can, however, be of very great value and if conducted by prison officials or indeed any persons of responsibility other than police officers evidence of what happens at such a parade is admissible under section 157 of the Evidence Ordinance, 1950 as corroborative of the evidence of any witness called at the trial.

Appeal allowed.

Solicitors: *Rajendra & Teik Ee.*

COMPTROLLER OF INCOME TAX v. R.S.T.

[A.C.J. (Tan Ah Tah J.) May 17, 1962]

[Singapore — Suit No. 428 of 1961]

Income Tax — Assessment — Notice of objection under Income Tax Ordinance (Cap. 166), s.76(2) — Plaintiff seeking further information under s.76(3) — Registrar signing final judgment in favour of plaintiff before finality reached — Appeal from Registrar's decision — Whether plaintiff can sue for income tax before assessment became final — Whether leave to defend should be given because triable issue raised — Whether income received by defendant was exempt from tax because it arose from sources outside Singapore.

This was an appeal from a decision of the Registrar under O.XIV of the R.S.C. giving plaintiff leave to sign final judgment for $303,555 being income tax due for the years of assessment 1951, 1952 and 1953 in accordance with the plaintiff's assessments dated 18.12.57, 4.12.58 and 15.12.59 and notice of demand dated 31.10.60. After receiving the notices of assessment the defendant lodged a notice of objection under section 76(2) of the Income Tax Ordinance. The plaintiff then requested further information under section 76(3) and before finality could be reached commenced the present action. It was argued, *inter alia*, for the defendant that (a) the right of the plaintiff to sue for income tax did not arise until assessments became final and conclusive; (b) the defendant should be given leave to defend the action because certain triable issues have been raised, one of them being whether sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation; (c) the income received by the defendant for the year of assessment 1951 was exempt from tax as it arose from sources outside Singapore and was received by the defendant while he was in Singapore for some temporary purpose.

Held: (1) the law on or after January 1, 1960, is that notwithstanding any objections or appeal against the assessment the tax shall be payable within the specified period. Sections 85 and 90 provide the plaintiff with a complete cause of action in this case;

(2) whether sums on which tax is claimed represent chargeable income which is taxable or capital assets not subject to taxation is a matter for the determination of the Board of Review;

(3) whether the income received by the defendant for the year of assessment, 1951 was exempt from tax was also a matter for the determination by the Board of Review.

Cases referred to:—

(1) *Commissioner of Taxation of the Commonwealth of Australia* v. *Cook* (1940), 1 A.I.T.R. 551.

(2) *A.B.C.* v. *The Comptroller of Income Tax*, [1959] M.L.J. 162.

APPEAL FROM THE REGISTRAR.

G. S. Hill for the plaintiff.

R. Ramani (*K. S. Chung* with him) for the defendant.

Cur. Adv. Vult.

Tan Ah Tah J.: This is an appeal from a decision of the Registrar, made under Order 14 of the Rules of the Supreme Court, giving the plaintiff leave to sign final judgment against the defendant for the sum of $303,555 and $231 for costs.

By a specially indorsed writ of summons which was issued on the 21st April, 1961 the plaintiff claimed from the defendant the sum of $333,555 being the amount of income tax alleged to be due and payable by the defendant. On the 10th August, 1961 part of the claim was withdrawn and the amount claimed was reduced to the sum of $303,555. The claim as it came before the Registrar was for income tax for the years of assessment 1951, 1952 and 1953 in accordance with the plaintiff's assessments dated respectively the 18th December, 1957, 4th December, 1958 and 15th December, 1959 and demand notes dated the 31st October, 1960.

It would appear that after receiving the notices of assessment the defendant lodged a notice of objection under section 76(2) of the Income Tax Ordinance (Cap. 166). In due course the plaintiff, acting under section 76(3) of the Ordinance, requested the defendant to furnish him with further information. Further correspondence and negotiations ensued but, before finality could be reached, and without issuing any notice of refusal to amend the assessments, the plaintiff commenced the present action. The reason why the plaintiff has acted as he has done does not appear on the record. This aspect of the matter was not discussed by counsel at the hearing and I propose to say no more on the point.

It was urged by counsel for the defendant that the right of the plaintiff to sue for payment of income tax did not arise until the assessments became final and conclusive. In considering this proposition it is necessary to refer to the law before the coming into operation of the Income Tax (Amendment) Ordinance, 1960. Before this Ordinance was enacted, section 85 of the Income Tax Ordinance provided as follows:

"Collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until such objection or appeal is determined:

Provided that the Comptroller may in any such case enforce payment of that portion of the tax, if any, which is not in dispute."